

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR M. JALLORIN, JR., ACCUSED-APPELLANT.

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is the Decision[1] dated August 5, 2008 of the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte, which found accused-appellant Cesar M. Jallorin, Jr. guilty beyond reasonable doubt of Murder in Criminal Case No. S-1358 and Slight Physical Injuries in Criminal Case No. S-1364. The dispositive portion of the Decision reads:

“WHEREFORE, the foregoing duly considered, the Court finds accused Cesar Jallorin, Jr.—

(a) GUILTY of the crime of murder in Criminal Case No. S-1358 and sentences him to suffer the penalty of reclusion perpetua and to pay the heirs of Pat. Arelie Alburo the following amounts: P50,000 as indemnity for his death; P50,000 as moral damages; P25,000 as exemplary damages; P25,000 as temperate damages in lieu of an award of loss of earning capacity; and P20,000 as temperate damages in lieu of actual or compensatory damages; and

(b) GUILTY of slight physical injuries in Criminal Case No. S-1364, and there being no mitigating or aggravating circumstance, sentences him to the penalty of imprisonment of twenty (20) days of arresto menor medium, with no civil liability as the complainant did not adduce evidence to prove her earning capacity and her hospitalization/medical expenses. Her claim for moral and exemplary damages has no legal basis.

If warranted, he shall be credited with the period of his preventive imprisonment in accordance with law.

Costs against the accused.

SO ORDERED.”[2]

The conviction of accused-appellant arose from the following Informations:

CRIMINAL CASE NO. S-1358

(Murder)

“The undersigned, Acting Second Assistant Provincial Fiscal, accuses CESAR JALLORIN, JR., of the crime of Murder committed as follows:

That, in the evening, on or about the 4[th] day of May, 1983, in the Municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, and with intent to kill by means of treachery and evident premeditation did, then and there willfully, unlawfully and feloniously assault, attack and stab one PAT. ARELIE ALBURO, thereby inflicting upon him multiple stab wounds in the different vital parts of his body which caused his instantaneous death; that as a result of the commission of the said crime, the heirs of the herein victim suffered the following damages, viz:

Indemnity for victim's death

P12,000.00

Loss of earning capacity

5,000.00

Moral and exemplary damages ..

20,000.00

P37,000.00

CONTRARY TO LAW, (Violation of Article 248, Revised Penal Code), with the qualifying circumstances of treachery and evident premeditation.”[3]

CRIMINAL CASE NO. S-1364

(Frustrated Murder)

“The undersigned, Acting Provincial Fiscal, accuses CESAR JALLORIN, JR y MACIAS of the crime of FRUSTRATED MURDER, committed as follows:

That, in the afternoon, on or about the 4[th] day of May, 1983, in the Municipality of Sindangan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused armed with a hunting knife with intent to kill by means of treachery and evident premeditation did, then and there willfully, unlawfully and feloniously assault, attack and stab one VILMA VERGARA, thereby inflicting upon her an ‘incised wound between the thumb and index finger (R)’, which would ordinarily cause her death; thus performing all acts of execution which would have produced the crime of Murder as a consequence, but which nevertheless, did not produce it for reason of causes independent of the will of the herein accused, that is, the ability of the victim to escape from his assailant and the timely and able medical assistance rendered to the said victim which prevented her death; that as a result of the commission of the said crime, the herein victim suffered the following damages, viz:

Hospitalization

P5,000.00

Loss of earning capacity....

5,000.00

Moral and exemplary damages

3,000.00

P10,000.00

CONTRARY TO LAW, with the qualifying circumstances of treachery and evident premeditation.”[4]

On the same day of May 4, 1983, accused-appellant was arrested and brought to the Sindangan Police Station, Zamboanga del Norte.[5]

On August 28, 1985 however, the prosecution manifested to the trial court that accused-appellant escaped from prison.[6] Consequently, an alias warrant for his arrest was issued.[7] The case was thereafter archived to avoid its indefinite pendency without prejudice to its reinstatement as soon as accused-appellant is re-arrested.[8]

On August 20, 2001,[9] accused-appellant was re-arrested.[10]

Thereafter, the two cases were ordered consolidated and joint trial ensued.[11]

On December 5, 2001, accused-appellant was arraigned and pleaded not guilty to the crimes charged.[12]

The prosecution presented Vilma Vergara, Magdalena Vergara, Rosalie Vergara-Alburo and Dr. Marcelito Lacaya in order to establish the following:

On May 4, 1983 at 4:30 o'clock in the afternoon, Pat. Arelie Alburo (Alburo for brevity) together with his mother-in-law Magdalena Vergara (Magdalena for brevity) and sister-in-law Vilma Vergara (Vilma for brevity) were on their way to his residence at Barangay Sta. Cruz, Sindanagan, Zamboanga del Norte.[13] The group passed by the house of a certain Nene Maglangit where few people were preparing the dancing hall in celebration of the fiesta of the barangay.[14] Among the people preparing the dancing hall was Ben Saligumba. The latter called up and thereafter approached Alburo. While conversing with each other, Vilma saw accused-appellant thrust his hunting knife at Alburo's back several times. Accused-appellant next pushed Alburo which caused him to fall on the ground. Thereafter, Alburo drew his service handgun from his waist. Accused-appellant grappled and was successful in gaining possession of the handgun from Alburo. Subsequently, accused-appellant fired shots at the side of Alburo without hitting him. Vilma approached Alburo and asked him “Noy, naunsa man ka?” (Noy, what happened to you?). It is at this juncture that accused-appellant thrust his hunting knife to Vilma hitting her right hand.[15] Accused-appellant then examined Alburo's eyes, afterwards, he continued to stab Alburo.[16]

Few minutes later, Pat. Damaso Tigmo (Pat. Tigmo for brevity) arrived at the crime scene with accused-appellant still holding the hunting knife and handgun. Pat. Tigmo told accused-appellant to surrender and ordered him to put the weapons down to which the latter obeyed without resistance.[17]

Magdalena and Vilma, among others, brought Alburo to the hospital but the latter was already dead by then. According to the Medico Legal Certification[18] issued by Dr. Manuel R. Simon of the Sindangan General Hospital, Alburo sustained multiple stab wounds, 12 wounds on the anterior side and 4 wounds on the posterior. For her part, Vilma was found to have incised wound between the thumb and index finger of her right hand as shown by Medico Legal Certification[19] issued by the same Dr. Simon. She was no longer confined and immediately after she was treated, she was allowed to go home.[20] It was Dr. Marcelito Lacaya, Chief of Hospital of Sindangan General Hospital who brought, identified and certified the two Medical Legal Certifications issued by Dr. Simon as the records on file in the hospital's possession. Dr. Lacaya testified that Dr. Simon is no longer working at the Sindangan General Hospital as he was already promoted as a Chief in a particular hospital at the Municipality of Liloy, Zamboanga del Norte.[21]

On the other hand, accused-appellant, in defense of himself, testified in order to establish the following:

Accused-appellant does not deny stabbing Alburo but contended though that he did so in self-defense.[22]

On May 4, 1983 at around 4:00 o'clock in the afternoon, accused-appellant was one of the volunteers at Barangay Sta. Cruz, Sindanagan, Zamboanga del Norte who helped with the fencing of the dancing hall in preparation for the coronation night later that evening. Accused-appellant was then with his wife, his sister and his brother-in-law Ben Salimbagat. Accused-appellant was then cleaning bamboos with the use of his bolo when Alburo approached and collared him. Alburo, who was drunk and was in a belligerent manner, pointed a revolver at accused-appellant. The latter wrested the revolver from Alburo and a shot went off. In defense of himself, accused-appellant stabbed Alburo on the left breast with the bolo he was holding. Alburo fell down and attempted to shot accused-appellant. Accused-appellant again stabbed Alburo. Immediately thereafter, the police arrived and he voluntarily surrendered.[23]

Accused-appellant testified that nobody tried to stop and pacify him and Alburo. He also claimed that he and Alburo do not hold any grudges against each other which could be the reason why Alburo tried to kill him. As regards Vilma, accused-appellant was not aware that he was able to hit her during the incident.[24]

After the parties presented their respective pieces of evidence, the trial court rendered the assailed Decision[25] dated August 5, 2008 finding accused-appellant guilty beyond reasonable doubt of Murder qualified by treachery in Criminal Case No. S-1358 and Slight Physical Injuries in Criminal Case No. S-1364.

Aggrieved, accused-appellant is now before Us raising his sole assignment of error:

“THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”[26]

The appeal is partly meritorious.

As regards Criminal Case No. S-1358.

For a person to be convicted of murder under Article 248[27] of the Revised Penal Code,[28] the following elements must concur: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 and (4) the killing is not parricide or infanticide.[29]

In this case, accused-appellant admitted that he was the person who stabbed Alburo; and the killing was clearly neither parricide[30] nor infanticide.[31] The remaining questions to be resolved therefore are as follows: (a) whether or not accused-appellant acted in self-defense in stabbing Alburo; (b) whether or not the killing was attended by treachery that would justify the trial court's conviction of murder; and (c) whether or not the mitigating circumstance of voluntary surrender can be appreciated in accused-appellant's favor.

The Supreme Court holds that when an accused admits killing the victim but invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[32] To establish self-defense, accused-appellant must prove the confluence of the following essential requisites: a) unlawful aggression on the part of the victim; b) lack of sufficient provocation on the part of the person defending himself; and c) reasonable necessity of the means employed to repel or prevent it.[33]

Accused-appellant contends that the first element of unlawful aggression is present here because Alburo's act of seizing his collar and pointing a gun at him at a very short distance clearly constitutes an impending danger on his life. Hence, he has no choice but to defend his life by stabbing Alburo with the bolo in his hand.[34]

We are not convinced.

Accused-appellant's claim that it was Alburo who was the unlawful aggressor is uncorroborated. He failed to present another witness who could testify on the manner Alburo allegedly attacked him. More so that as testified to by him, there are some people in the place of the incident which included his wife, his sister and his brother-in-law Ben Salimbagat. Indeed, if accused-appellant truly maintains his innocence that he acted in self-defense as he insists, there would have been no issue on his family members testifying in his favor.

Furthermore, considering the time the incident took place when Alburo allegedly seized accused-appellant's collar, pointed a gun at him and grappled possession of the same, the commotion would have certainly attracted the attention of the people around them. But for reasons only known to him, accused-appellant failed to invoke the trial court's authority to issue subpoena to these people so they can testify in court to prove that he indeed merely defended himself. Accused-appellant failed to explain why no one came to his rescue. To be sure, ingrained in Our jurisprudence is the rule that self-defense cannot be justifiably appreciated when it is uncorroborated by independent and competent evidence or when it is extremely doubtful by itself.[35]

For accused-appellant's failure to prove by clear and convincing evidence that Alburo is the unlawful aggressor therefore, his claim of self-defense cannot be sustained.[36] Certainly, unlawful aggression is the indispensable element of self-defense because if it is not established that the victim is the unlawful aggressor, self-defense is unavailing for there is nothing to repel.[37] In *Razon v. People*,[38] the Supreme Court stressed:

"The condition sine qua non for the justifying circumstance of self-defense is the element of unlawful aggression. There can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger thereof and not just a threatening or intimidating attitude. In case of threat, it must be offensive, strong and positively showing the wrongful intent to cause injury. For a person to be considered the unlawful aggressor, he must be shown to have exhibited external acts clearly showing his intent to cause and commit harm to the other." (Emphasis Supplied)

In addition, from accused-appellant's testimony, he declared that he stabbed Alburo six times at the left breast.[39] It bears stressing that the number of wounds inflicted on Alburo are considered indicia which refute accused-appellant's plea of self-defense, demonstrative as they are of an effort to kill Alburo and not just to defend himself. This conclusion finds support in the case of *Sienes v. People*. [40]

We note moreover that accused-appellant's claim of self-defense was a mere afterthought. If accused-appellant truly maintains his innocence, he would then have immediately relayed this defense to his counsel so that a reverse trial could have proceeded below.[41] As it turned out, the prosecution undertook to discharge the burden of proving accused-appellant's guilt when the burden of proof to establish that the killing was justified should have been his in the first place.[42] But as it happened below, accused-appellant offered no explanation at all in this regard.

The foregoing considered, We concur with the trial court that that accused-appellant's plea of self-defense must fail.

Accused-appellant next claims that the qualifying circumstance of treachery is not attendant in this case. He argues that the prosecution failed to adduce evidence to prove that he made preparations to kill Alburo in such a manner as to make it impossible for Alburo to defend himself.[43]

On this regard, We agree with accused-appellant.

The essence of treachery under Article 14 paragraph 16[44] of the Revised Penal Code has been explained in the case of *People v. Dones*[45] as follows:

“There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to the offender arising from any defense that the offended party might make. The elements of treachery are as follows: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. This is the essence of treachery--a deliberate and sudden attack; affording the hapless, unarmed, and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.” (Emphasis Supplied)

The circumstance of treachery cannot be presumed. It must be specifically alleged in the Information[46] and proven by clear and convincing evidence.[47]

In the case at bar, the two elements of treachery are absent.

First, prosecution witness Magdalena herself testified that she does not know how the incident started because she did not see how the stabbing was done.[48] For her part, Vilma merely testified that accused-appellant passed by Alburo’s side and then proceeded to his back and stabbed him.[49] Their testimonies are revealing:

Magdalena Vergara

“Q:

And according to you, you were just approximately 1 fathom away from him?

A:

Yes, Sir.

Q:

Certainly because of that distance of course you know the presence of Jallorin at that time?

A:

No, Sir.

Q:

Nothing happened because you didn’t see him(,) it was only Ben Salimbagat.

A:

Yes, Sir.

Q:

So, you have no knowledge how was the stabbing done because you didn’t see the act of stabbing made by the alleged, made by Jallorin upon the person of your son-in-law(,) is that correct?

A:

Yes, Sir.

Xxx xxx xxx”[50] (Emphasis Supplied)

Vilma Vergara

“Q:

You said you were just near from (sic) Ben Salimbagat and Pat. Arelie Alburo at that time, is that correct?

A:

Yes, sir.

Q:

At that time when Pat. Arelie Alburo and Ben Salimbagat were conversing(,) did you notice the presence of the accused Cesar Jallorin, Jr.

A:

I saw him because he immediately approached them, and immediately he stabbed the victim.

Xxx xxx xxx

Q:

From your observation(,) did he pass from the front of Pat. Arelie Alburo?

A:

No, sir.

Q:

Did you notice where did he pass when he approached Pat. Arelie Alburo?

A:

No, sir.

Q:

Did you notice where did he pass when he approached Pat. Arelie Alburo?

A:

(The witness demonstrated. At the time of the incident, the accused passed by his side and proceeding to the back of the victim.)

Xxx xxx xxx”[51] (Emphasis Supplied)

By no stretch of imagination could the foregoing be construed as treachery because Magdalena and Vilma themselves claim that they are not certain how the incident commenced. In *People v. Zeta*,^[52] the Supreme Court stated:

“Treachery cannot be established where no particulars are known regarding the manner in which the aggression was carried out, or how it began or developed. Treachery must be based on positive or conclusive proofs, not mere suppositions or speculations. Moreover, it must be proved as clearly and as convincingly as the killing itself.” (Emphasis Supplied)

Second, the means employed by accused-appellant to stab Alburo did not totally deprive the latter the opportunity to defend himself or to retaliate or to escape.[53] From the prosecution witnesses' account of the incident, Alburo was able to draw his gun and even struggled to possess the same albeit unsuccessful. Clearly then, when accused-appellant inflicted his first stab on Alburo, the latter was already forewarned on the impending danger to his life. In *People v. Flores*,[54] the Supreme Court negated the presence of treachery in that case because with the first stab wound inflicted by accused-appellant therein, the victim was already forewarned of the danger to his life and in fact was able to flee, although too late. Indeed, treachery cannot be appreciated where the victim was forewarned or could have anticipated the aggression of the accused,[55] as in this case. There is no treachery when the victim was able to defend himself,[56] and he chose to be courageous instead of cautious.[57]

While it may be conceded that when accused-appellant inflicted the first stab, it has been delivered under the conditions exhibiting some features of treachery, the same does not change the fact that the prosecution failed to prove the existence of treachery at the onset of the attack.[58]

Third, there was absolutely no evidence to show that accused-appellant's means of execution was deliberate or consciously adopted to eliminate any risk to himself. Verily, before the incident happened, accused-appellant was helping with the fencing of the dancing hall for the coronation to be held later that night. That is all. There is no showing that accused-appellant reflected, planned and made some preparation to kill Alburo. Said by the Supreme Court in one case:[59]

"The trial court appreciated the qualifying circumstance of treachery on the ground that appellant suddenly attacked the victim. However, it does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. In treachery, the mode of attack must be consciously adopted. This means that the accused must make some preparation to kill the deceased in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or to retaliate. The mode of attack, therefore, must be planned by the offender, and must not spring from the unexpected turn of events. While the attack on Nathaniel was sudden and unexpected, there is no showing that appellant consciously adopted his mode of attack in order to insure the execution of the crime without risk to himself. Neither was Nathaniel completely caught by surprise. He and appellant grappled for the knife. Also, he was able to run away before he was eventually killed. It bears emphasis that he struggled for the possession of the knife and had the opportunity to grab it and defend himself." (Emphasis Supplied)

Accused-appellant also contends that he is entitled to the mitigating circumstance of voluntary surrender because immediately after the incident, he willingly and voluntarily surrendered to the Pat. Tigmo. According to him, he had the opportunity to flee at that time as nobody among the persons present tried to intervene but he chose to offer no resistance and to surrender, a patent indication of his lack of criminal intent.[60]

We are not convinced.

The mitigating circumstance of voluntary surrender under Article 13 paragraph 7[61] has been explained in the case of *De Vera v. De Vera*,[62] to wit:

"For voluntary surrender to be appreciated, the following requisites should be present: 1) the offender has not been actually arrested; 2) the offender surrendered himself to a person in authority or the latter's agent; and 3) the surrender was voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these elements, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance." (Emphasis Supplied)

Here, the mere fact that accused-appellant did not flee from the scene of the crime or offered no resistance does not make his surrender voluntary^[63] because Pat. Tigmo actually arrived therein to make him surrender. Moreover, accused-appellant's surrender was not spontaneous as he had no choice but to submit himself to the authorities. In *People v. Deopante*,^[64] the Supreme Court stated:

“Contrary to appellant's protestations, the trial court was correct in finding no voluntary surrender in this case. Xxx It will be observed in this case that there was no conscious effort on the part of the accused—who was fetched from his house by police officers to go to police headquarters for investigation—to voluntarily surrender and/or acknowledge his guilt. He went with them for the purpose of clearing his name as he in fact tried to do during the investigation where he professed his innocence. The fact alone that he did not resist but went peacefully with the lawmen does not mean that he voluntarily surrendered. On this point, it is apt to quote the decision of this Court in *People vs. Flores* where we stated that:

‘Neither can we accept accused-appellant's plea of voluntary surrender. He did not surrender to the police. In fact, the evidence adduced shows that it was the police authorities who came to the factory looking for him. It was there that accused-appellant was pointed to them. With the police closing in, accused-appellant actually had no choice but to go with them. Seeing that the police were already approaching him, accused-appellant did not offer any resistance and peacefully went with them. To be sure, no surrender was made by accused-appellant.’” (Emphasis Supplied)

As regards the penalty.

Absent the qualifying circumstance of treachery, accused-appellant could only be convicted of Homicide punishable by reclusion temporal under Article 249^[65] of the Revised Penal Code. There being no modifying circumstances in the instant case, the penalty should be imposed in its medium period. Applying the Indeterminate Sentence Law, accused-appellant is entitled to an indeterminate penalty the minimum of which shall be within the range of the penalty next lower in degree, i.e., prision mayor in any of its periods, and the maximum of which shall be within the range of reclusion temporal in its medium period. Therefore, accused-appellant is hereby sentenced to an indeterminate penalty of twelve (12) years of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

Anent the award of damages.

The trial court's award of P50,000.00 as civil indemnity and P50,000.00 as moral damages to the heirs of Alburo should be increased to P75,000.00 each pursuant to Article 2219^[66] of the Civil Code and as set forth by prevailing jurisprudence.^[67] In a case of murder, the award of civil indemnity and moral damages are mandatory without need of allegation and proof other than the commission of the crime.^[68]

As regards the trial court's award of P20,000.00 as temperate damages in lieu of actual damages, the same should be increased to P25,000.00 to conform with current jurisprudence. In cases of murder or homicide, temperate damages are awarded when no evidence of burial or funeral expenses is presented in the trial court,^[69] as in this case.

In like manner, the trial court's award of P20,000.00 as temperate damages in lieu of loss of earning capacity should be increased to P25,000.00 pursuant to current jurisprudence. In this case, Alburo's wife, Rosalie Vergara-Alburo, testified that her husband was a member of the Philippine National Police in Sindangan, Zamboanga del Norte.^[70] In *Espana v. People*,^[71] the Supreme Court elucidated:

“The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence if there is testimony that the victim was either (1) self-employed, earning less than the minimum wage under current

labor laws, and judicial notice is taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.

In this case, neither of the two exceptions applied. The earnings of So and Castro were both above the minimum wage set by labor laws in their respective workplaces at the time of their death. This being the case, the general rule of requiring documentary evidence of their earning capacities finds application. Unfortunately for their heirs, no such proof was presented at all. It was therefore erroneous for both the trial court and the Court of Appeals to award compensatory damages for loss of earning capacity on the basis alone of the oral testimonies of So's father and Castro's mother.

The lack of documentary evidence notwithstanding, since loss was actually established in this case, temperate damages in the amount of P25,000 each may be awarded to the heirs of So and Castro, respectively. Under Article 2224 of the Civil Code, temperate or moderate damages (which are more than nominal but less than compensatory damages) may be recovered when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty." (Emphasis Supplied)

On the other hand, the award of exemplary damages in the amount of P25,000.00 should be deleted as there is no attendant aggravating circumstance here in accordance with Article 2230[72] of the Civil Code.

In addition, the damages assessed here shall be subject to the legal interest of six percent (6%) per annum pursuant to the case of *People v. De Jesus*.^[73]

As regards Criminal Case No. S-1364.

Accused-appellant maintains that the trial court erred in convicting him of Slight Physical Injuries because even assuming that he did wound Vilma, the same was unintentional and without any criminal intent. The wound could have been the product of the struggle between him and Alburo because as Vilma testified, she was near them at the time of the incident.^[74]

We do not agree.

The fact that accused-appellant did not intend to injure Vilma does not relieve him of criminal liability. Article 4[75] of the Revised Penal Code states that criminal liability shall be incurred, inter alia, by any person committing a felony (delito) although the wrongful act done be different from that which he intended.

Moreover, it was established below that Vilma was brought to Sindangan General Hospital for medical treatment immediately after the incident. She accordingly suffered from an incised wound between her thumb and index finger. Right after receiving medical treatment, Vilma was released by Sindangan General Hospital on the same day and according to her, she was able to do her usual chores.^[76] Considering there was no other evidence to prove that Vilma was incapacitated for labor or required medical attendance for more than nine days, the trial court correctly convicted accused-appellant of Slight Physical Injuries under Article 266 paragraph 1^[77] of the Revised Penal Code.

Anent the penalty.

The penalty for Slight Physical Injuries is *arresto menor* which ranges from one (1) day to thirty (30) days of imprisonment. There being no modifying circumstance here, the trial court was correct in imposing the medium penalty of twenty (20) days of *arresto menor* against accused-appellant. Since the penalty of *arresto menor* does not exceed one (1) year, the Indeterminate Sentence Law does not apply.^[78]

As to damages. We agree with the trial court that Vilma should not be awarded any because she failed to ask and adduce any evidence to justify such award.^[79]

WHEREFORE, the appeal is partly granted.

- As regards Criminal Case No. S-1358, the assailed Decision dated August 5, 2008 is AFFIRMED with MODIFICATIONS in that accused-appellant Cesar M. Jallorin, Jr. is found guilty beyond reasonable doubt of Homicide and is imposed to suffer the indeterminate sentence of twelve (12) years of prision mayor as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. In addition, accused-appellant is ordered to pay the following to the heirs of Pat. Arelie Alburo:

- a) Civil indemnity in the amount of P75,000.00;
- b) Moral damages in the amount of P75,000.00;
- c) Temperate damages in lieu of loss of earning capacity in the amount of P25,000;
- d) Temperate damages in lieu of actual damages in the amount of P25,000.00; and
- e) Interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this decision.
- f) On the other hand, the trial court's award of P25,000.00 as exemplary damages is deleted; and

- As regards Criminal Case No. S-1364, the assailed Decision dated August 5, 2008 of the Regional Trial Court, Branch 11, Sindangan, Zamboanga del Norte which found accused-appellant Cesar M. Jallorin, Jr. guilty beyond reasonable doubt of Slight Physical Injuries and which imposed on him the penalty of imprisonment of twenty (20) days of arresto menor, is AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 74-90

[2] Rollo, p. 90

[3] Records, p. 28

[4] Records, pp. 30-31

[5] TSN, August 30, 2002, p. 11

[6] Records, p. 34

[7] Records, p. 38

[8] Records, pp. 41-42

[9] Accused-appellant claims though that he was re-arrested on August 21, 2001. See TSN, March 28, 2008, p. 6

[10] Records, p. 50

[11] Rollo, p. 77

[12] Records, p. 57

[13] TSN, April 1, 2004, pp. 7-9

[14] TSN, August 30, 2002, pp. 15-16

[15] TSN, April 1, 2004, p. 10

[16] TSN, August 30, 2002, pp. 6-7

[17] TSN, August 30, 2002, pp. 20-22; TSN, April 1, 2004, pp. 14-16

[18] Records, p. 199

[19] Records, p. 120

[20] TSN, August 30, 2002, p. 15

[21] TSN, February 28, 2005, pp. 4; 8; 16

[22] TSN, March 28, 2008, p. 2

[23] TSN, January 25, 2008, pp. 4-10

[24] TSN, January 25, 2008, pp. 9-10

[25] Rollo, pp. 74-90

[26] Rollo, p. 54

[27] Article 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

- In consideration of a price, reward, or promise.

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

- With evident premeditation.

- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[28] Act 3815, Revised Penal Code

[29] People v. Gabrino, G.R. No. 189981, March 9, 2011

[30] Article 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

[31] Article 255. Infanticide. — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prision correccional in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be prision mayor.

[32] People v. Tagana, G.R. No. 133027, March 4, 2004

[33] People v. Castellano, Sr., G.R. No. 139412, April 2, 2003

[34] Rollo, p. 60

[35] Belbis, Jr. v. People, G.R. No. 181052, November 14, 2012; People v. Balinas, Jr., G.R. No. 181631, September 30, 2008; Marzonía v. People, G.R. No. 153794, June 26, 2006

[36] People v. Dolorido, G.R. No 191721, January 12, 2011

[37] People v. Fontanilla, G.R. No. 177743, January 25, 2012

[38] G.R. No. 158053, June 21, 2007

[39] TSN, January 25, 2008, p. 12

[40] G.R. No. 132925, December 13, 2006

[41] Rules of Court, Rule 119, Section 11. Order of trial.—The trial shall proceed in the following order:

Xxx xxx xxx

(e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified.

[42] People v. Mortera, G.R. No. 188104, April 23, 2010

[43] Rollo, pp. 67-70

[44] Article 14. Aggravating circumstances. — The following are aggravating circumstances:

Xxx xxx xxx

16. That the act be committed with treachery (alevosia).

Xxx xxx xxx

[45] G.R. No. 188329, June 20, 2012

[46] Rules of Court, Rule 110, Section 8. Designation of the offense.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. Cause of the accusation.—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[47] People v. Latag, G.R. No. 153213, January 22, 2004

[48] TSN, April 1, 2004, p. 19

[49] TSN, August 30, 2002, p. 12

[50] TSN, April 1, 2004, p. 19

[51] TSN, August 30, 2002, p. 12

[52] People v. Zeta, G.R. Nos. 140901-02, May 9, 2002

[53] People v. Discalsota, G.R. No.136892, April 11, 2002

[54] G.R. No. 137497, February 5, 2004

[55] People v. Antonio, G.R. No. 128900, July 14, 2000

[56] People v. Maribung, G.R. No. L-47500, April 29, 1987

[57] People v. Se, G.R. No. 152966, March 17, 2004

[58] People v. Ilo, G.R. No. 140731, November 21, 2002

[59] People v. Flores, G.R. No. 137497, February 5, 2004

[60] Rollo, p. 66

[61] Article 13. Mitigating circumstances. — The following are mitigating circumstances;

- Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.

Xxx xxx xxx

- That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

Xxx xxx xxx

[62] G.R. No. 172832, April 7, 2009

[63] People v. Dichoso, G.R. No. 131822, July 27, 2000

[64] G.R. No. 102772, October 30, 1996

[65] Article 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another

without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[66] Article 2219. Moral damages may be recovered in the following and analogous cases:

A criminal offense resulting in physical injuries;

Xxx xxx xxx

[67] People v. De Jesus, G.R. No. 186528, January 26, 2011; People v. Ducabo, G.R. No. 175594, September 28, 2007; People v. Eling, G.R. No. 178546, April 30, 2008; People of the Philippines v. Delim, G.R. No. 142773, January 28, 2003

[68] People v. Chongoy, G.R. No. 173842, August 28, 2008; People v. Domingo, G.R. No. 184343, March 2, 2009

[69] People v. De Jesus, G.R. No. 186528, January 26, 2011

[70] TSN, November 28, 2002, pp. 5-6

[71] G.R. No. 163351, June 21, 2005

[72] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[73] People v. De Jesus, G.R. No. 186528, January 26, 2011

[74] Rollo, p. 60

[75] Art. 4. Criminal liability. — Criminal liability shall be incurred:

- By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

Xxx xxx xxx

[76] TSN, August 30, 2002, p. 15

[77] Article 266. Slight physical injuries and maltreatment. – The crime of slight physical injuries shall be punished:

By arresto menor when the offender has inflicted physical injuries which shall incapacitate the offended party from labor from one to nine days, or shall require medical attendance during the same period.

Xxx xxx xxx

[78] Act 4103, Sec. 2. This Act shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, rebellion, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose maximum term of imprisonment does not exceed one year, not to those already sentenced by final judgment at the time of approval of this Act, except as provided in Section 5 hereof. (As amended by Act No. 4225.)

[79] Rollo, p. 90

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